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11 Attorneys for Defendants,
12 CITY OF SAN JOSE, SAN JOSE POLICE DEPARTMENT,
13 OFFICER C. PROFT, OFFICER ARCHER, OFFICER
14 D'ARRIGO, OFFICER STRUNK, and SERGEANT NIEVES

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA,
17 SAN JOSE DIVISION

18 CHRISTOPHER HINMAN, CAROLE
19 MIRRASOUL,

20 Plaintiffs,

21 v.

22 SAN JOSE POLICE OFFICER C. PROFT
23 (BADGE NO. 2966), SAN JOSE POLICE
24 OFFICER ARCHER (BADGE NO. 3096),
25 SAN JOSE POLICE OFFICER D'ARRIGO
26 (BADGE NO. 3139), SAN JOSE POLICE
27 OFFICER STRUNK (BADGE NO. 2626),
28 SAN JOSE POLICE SERGEANT
KNIEVES (BADGE NO. 3144), SAN
JOSE POLICE DEPARTMENT, CITY OF
SAN JOSE, AND DOES 1-200

Defendants.

Case Number: C07-03862 JF

**DEFENDANTS' ANSWER TO
PLAINTIFFS' COMPLAINT FOR
DAMAGES**

JURY TRIAL DEMANDED

25 Defendants, City of San Jose, San Jose Police Department (not a separate legal
26 entity), Officer C. Proft, Officer Archer, Officer D'Arrigo, Officer Strunk, and Sergeant
27 Nieves, hereby respond to the Complaint in the above-entitled matter as follows:

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1 1. Answering Paragraph 1 of Plaintiffs' Complaint, Defendants lack sufficient
2 information and belief, and therefore, deny the allegations contained therein.

3 2. Answering Paragraph 2 of Plaintiffs' Complaint, Defendants deny the
4 allegations contained therein.

5 3. Answering Paragraph 3 of Plaintiffs' Complaint, Defendants lack sufficient
6 information and belief, and therefore, deny the allegations contained therein.

7 4. Answering Paragraph 4 of Plaintiffs' Complaint, Defendants lack sufficient
8 information and belief, and therefore, deny the allegations contained therein.

9 5. Answering Paragraph 5 of Plaintiffs' Complaint, Defendants lack sufficient
10 information and belief, and therefore, deny the allegations contained therein.

11 6. Answering Paragraph 6 of Plaintiffs' Complaint, Defendants admit the
12 allegations contained therein.

13 7. Answering Paragraph 7 of Plaintiffs' Complaint, Defendants lack sufficient
14 information and belief, and therefore, deny the allegations contained therein.

15 8. Answering Paragraph 8 of Plaintiffs' Complaint, Defendants admit the
16 allegations contained therein with the exception of the allegation that no CIT Officer ever
17 responded that night. Defendants deny that allegation.

18 9. Answering Paragraph 9 of Plaintiffs' Complaint, Defendants lack sufficient
19 information and belief, and therefore, deny the allegations contained therein.

20 10. Answering Paragraph 10 of Plaintiffs' Complaint, Defendants lack sufficient
21 information and belief, and therefore, deny the allegations contained therein.

22 11. Answering Paragraph 11 of Plaintiffs' Complaint, Defendants deny the
23 allegations contained therein.

24 12. Answering Paragraph 12 of Plaintiffs' Complaint, Defendants deny the
25 allegations contained therein.

26 13. Answering Paragraph 13 of Plaintiffs' Complaint, Defendants deny the
27 allegations contained therein.

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1 14. Answering Paragraph 14 of Plaintiffs' Complaint, Defendants admit the
2 allegations contained therein with the exception of the allegation that Carole Mirrasoul
3 spoke to the Defendant Officers about Christopher Hinman's medicated state. As to that
4 allegation, Defendants state that Carol Mirrasoul advised one or more Defendant Officers
5 that Christopher Hinman was not taking his medication.

6 15. Answering Paragraph 15 of Plaintiffs' Complaint, Defendants deny the
7 allegations contained therein with the exception of the allegation that Carol Mirrasoul
8 communicated to one or more Defendant Officers that Christopher Hinman had attempted
9 to cut himself that day.

10 16. Answering Paragraph 16 of Plaintiffs' Complaint, Defendants deny the
11 allegations contained therein with the exception of the allegation that Defendant Officer
12 Proft removed his baton. Defendant Officer Proft admits that allegation.

13 17. Answering Paragraph 17 of Plaintiffs' Complaint, Defendants admit that
14 Christopher Hinman was removed toward the front door of the residence and that, at that
15 time, he complied with the Defendant Officers physical control. Defendants deny the
16 remaining allegations contained in Paragraph 17.

17 18. Answering Paragraph 18 of Plaintiffs' Complaint, Defendants admit that one
18 or more Defendant Officers used reasonable force to overcome the resistance of
19 Christopher Hinman. Defendants deny the remaining allegations contained in
20 Paragraph 18.

21 19. Answering Paragraph 19 of Plaintiffs' Complaint, Defendants deny the
22 allegations contained therein.

23 20. Answering Paragraph 20 of Plaintiffs' Complaint, Defendants deny the
24 allegations contained therein.

25 21. Answering Paragraph 21 of Plaintiffs' Complaint, Defendants deny the
26 allegations contained therein.

27 22. Answering Paragraph 22 of Plaintiffs' Complaint, Defendants deny the
28 allegations contained therein.

1 23. Answering Paragraph 23 of Plaintiffs' Complaint, Defendants admit that
2 Defendant Officer D'Arrigo discharged his taser on Christopher Hinman for approximately
3 3 seconds. Defendants deny the remaining allegations contained in Paragraph 23.

4 24. Answering Paragraph 24 of Plaintiffs' Complaint, Defendants admit that
5 Defendant Officer D'Arrigo discharged his taser on Christopher Hinman for approximately
6 3 seconds. Defendants deny the remaining allegations contained in Paragraph 24.

7 25. Answering Paragraph 25 of Plaintiffs' Complaint, Defendants deny the
8 allegations contained in Paragraph 25 with the exception of the allegation that at some
9 point during the struggle, Christopher Hinman was placed in a wrap.

10 26. Answering Paragraph 26 of Plaintiffs' Complaint, Defendants deny the
11 allegations contained therein.

12 27. Answering Paragraph 27 of Plaintiffs' Complaint, Defendants deny the
13 allegations contained therein.

14 28. Answering Paragraph 28 of Plaintiffs' Complaint, Defendants deny the
15 allegations contained therein.

16 29. Answering Paragraph 29 of Plaintiffs' Complaint, Defendants deny the
17 allegations contained therein.

18 30. Answering Paragraph 30 of Plaintiffs' Complaint, Defendants deny the
19 allegations contained therein.

20 31. Answering Paragraph 31 of Plaintiffs' Complaint, Defendants repeat and
21 re-allege their answers to Paragraphs 1 through 30 as if fully set forth herein.

22 32. Answering Paragraph 32 of Plaintiffs' Complaint, Defendants lack sufficient
23 information and belief, and therefore, deny the allegations contained therein.

24 33. Answering Paragraph 33 of Plaintiffs' Complaint, Defendants repeat and
25 re-allege their answers to Paragraphs 1 through 32 as if fully set forth herein.

26 34. Answering Paragraph 34 of Plaintiffs' Complaint, Defendants deny the
27 allegations contained therein.

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1 35. Answering Paragraph 35 of Plaintiffs' Complaint, Defendants deny the
2 allegations contained therein.

3 36. Answering Paragraph 36 of Plaintiffs' Complaint, Defendants repeat and
4 re-allege their answers to Paragraphs 1 through 35 as if fully set forth herein.

5 37. Answering Paragraph 37 of Plaintiffs' Complaint, Defendants deny the
6 allegations contained therein.

7 38. Answering Paragraph 38 of Plaintiffs' Complaint, Defendants deny the
8 allegations contained therein.

9 39. Answering Paragraph 39 of Plaintiffs' Complaint, Defendants repeat and
10 re-allege their answers to Paragraphs 1 through 38 as if fully set forth herein.

11 40. Answering Paragraph 40 of Plaintiffs' Complaint, Defendants deny the
12 allegations contained therein.

13 41. Answering Paragraph 41 of Plaintiffs' Complaint, Defendants deny the
14 allegations contained therein.

15 42. Answering Paragraph 42 of Plaintiffs' Complaint, Defendants repeat and
16 re-allege their answers to Paragraphs 1 through 41 as if fully set forth herein.

17 43. Answering Paragraph 43 of Plaintiffs' Complaint, Defendants deny the
18 allegations contained therein.

19 44. Answering Paragraph 44 of Plaintiffs' Complaint, Defendants deny the
20 allegations contained therein.

21 45. Answering Paragraph 45 of Plaintiffs' Complaint, Defendants deny the
22 allegations contained therein.

23 46. Answering Paragraph 46 of Plaintiffs' Complaint, Defendants deny the
24 allegations contained therein.

25 47. Answering Paragraph 47 of Plaintiffs' Complaint, Defendants repeat and
26 re-allege their answers to Paragraphs 1 through 46 as if fully set forth herein.

27 48. Answering Paragraph 48 of Plaintiffs' Complaint, Defendants admit the
28 allegations contained therein.

1 49. Answering Paragraph 49 of Plaintiffs' Complaint, Defendants deny the
2 allegations contained therein.

3 50. Answering Paragraph 50 of Plaintiffs' Complaint, Defendants deny the
4 allegations contained therein.

5 51. Answering Paragraph 51 of Plaintiffs' Complaint, Defendants deny the
6 allegations contained therein.

7 52. Answering Paragraph 52 of Plaintiffs' Complaint, Defendants deny the
8 allegations contained therein.

9 53. Answering Paragraph 53 of Plaintiffs' Complaint, Defendants repeat and
10 re-allege their answers to Paragraphs 1 through 52 as if fully set forth herein.

11 54. Answering Paragraph 54 of Plaintiffs' Complaint, Defendants admit the
12 allegations contained therein.

13 55. Answering Paragraph 55 of Plaintiffs' Complaint, Defendants deny the
14 allegations contained therein.

15 56. Answering Paragraph 56 of Plaintiffs' Complaint, Defendants deny the
16 allegations contained therein.

17 57. Answering Paragraph 57 of Plaintiffs' Complaint, Defendants deny the
18 allegations contained therein.

19 58. Answering Paragraph 58 of Plaintiffs' Complaint, Defendants deny the
20 allegations contained therein.

21 59. Answering Paragraph 59 of Plaintiffs' Complaint, Defendants repeat and
22 re-allege their answers to Paragraphs 1 through 58 as if fully set forth herein.

23 60. Answering Paragraph 60 of Plaintiffs' Complaint, Defendants deny the
24 allegations contained therein.

25 61. Answering Paragraph 61 of Plaintiffs' Complaint, Defendants deny the
26 allegations contained therein.

27 62. Answering Paragraph 62 of Plaintiffs' Complaint, Defendants deny the
28 allegations contained therein.

FIRST AFFIRMATIVE DEFENSE

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2 1. As and for a first affirmative defense, Defendants allege that the Complaint
3 fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

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5 2. As and for a second affirmative defense, Defendants allege that Plaintiff was
6 careless and negligent in and about the matters referred to in the Complaint, and further
7 that Plaintiff failed to exercise ordinary care for Plaintiff's own safety and such
8 carelessness and negligence on the part of Plaintiff proximately caused and contributed to
9 the damages, detriments, or injuries sustained by Plaintiff, if any, and that Plaintiff's
10 recovery should therefore be barred or reduced to the extent of Plaintiff's negligence.

THIRD AFFIRMATIVE DEFENSE

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12 3. As and for a third affirmative defense, Defendants allege that any harm
13 Plaintiff suffered was the result of a negligent or otherwise wrongful act and/or conduct of
14 persons other than the Defendants and that the conduct of other persons other than the
15 Defendants was the sole and proximate cause of the injuries and damages alleged by
16 Plaintiff.

FOURTH AFFIRMATIVE DEFENSE

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18 4. As and for a fourth affirmative defense, Defendants allege that all actions
19 taken were undertaken in good faith and with reasonable belief that the actions were valid,
20 necessary, constitutionally proper, and objectively reasonable for a police officer in the
21 same circumstances, entitling Defendants to the qualified immunity of good faith.

FIFTH AFFIRMATIVE DEFENSE

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23 5. As and for a fifth affirmative defense, Defendants allege that they are
24 immune from the state law causes of action pursuant to Government Code §§800-1000,
25 including but not limited to §§820.2 820.4, 820.8, 821.6, 821.8, and 822.2.

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SIXTH AFFIRMATIVE DEFENSE

6. As and for a sixth affirmative defense, Defendants allege that Plaintiff's Complaint is barred in that Plaintiff failed to comply with the claims filing provision of Government Code §900, *et. seq.*

SEVENTH AFFIRMATIVE DEFENSE

7. As and for a seventh affirmative defense, Defendants allege that Plaintiff's Complaint is barred by the applicable statutes of limitation.

EIGHTH AFFIRMATIVE DEFENSE

8. As and for an eighth affirmative defense, Defendants allege that Plaintiff has failed to mitigate his damages, if any.

NINTH AFFIRMATIVE DEFENSE

9. As and for a ninth affirmative defense, Defendants allege that if Plaintiff was detained, the answering Defendants had probable cause to detain Plaintiff based upon the Defendants' investigation, knowledge, and observations preceding the detention and that the Plaintiff was validly detained.

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